Filed 1/26/16 In re Christian A. CA4/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| In re CHRISTIAN A., a Person Coming Under the Juvenile Court Law. | |
| ORANGE COUNTY SOCIAL SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>L.A.,<br><br>Defendant and Appellant. | G052231<br><br>(Super. Ct. No. DP019328)<br><br>O P I N I O N |

Appeal from a judgment and orders of the Superior Court of Orange County, Andre Manssourian, Judge. Affirmed.

Lawrence A. Aufill, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

L.A. is the mother of Christian A., now seven years old. She contends the juvenile court erred in both terminating her parental rights and in not placing Christian with relatives. Finding no error, we affirm the judgment and orders.

I

FACTS

We filed our first nonpublished opinion (*In re J.G.* (June 9, 2011, G044689)) in an appeal in this matter wherein we affirmed the juvenile court's dispositional order to the extent the oldest of four children, who was then 11 years old, was placed apart from his three siblings. We filed a second nonpublished opinion (*L.A. v. Superior Court* (June 25, 2012, G046688)) in which we denied mother's request to issue a peremptory writ of mandate directing the juvenile court to vacate the orders it made on March 20, 2012, when the juvenile court terminated the mother's family reunification services and scheduled a hearing pursuant to Welfare and Institutions Code section 366.26. (All statutory references are to the Welfare and Institutions Code.) In the second opinion, we stated the following facts:

"Mother has four children: son J.G. (born in 1999); son B.A. (born in 2005); daughter J.A. (born in 2007); and son C.A. (born in 2008). The children have three different fathers, but for purposes of this case we shall refer to J.H. as 'father' because he is the presumed father of the two youngest children and is involved in the underlying facts of this dependency action.

"In January 2010, SSA [Orange County Social Services Agency] began investigating allegations of physical abuse reported by J.G.'s elementary school. In response to questioning, J.G. claimed father abused him by throwing objects at J.G. (such as shoes and, on one occasion, a bowl of ice cream). J.G. had 19 bruises on his body; J.G. claimed 14 of the bruises were caused by father.

"All four of the children were detained and placed in a foster care facility on January 8, 2010. SSA filed a juvenile dependency petition on January 11, 2010. On January 12, 2010, the court approved of the detention of the children from their parents' physical custody, and further approved their placement at a suitable facility or with a suitable foster parent.

"On January 21, 2010, J.G. was removed from his initial foster facility placement (separating him from his three siblings). The foster mother 'requested the child be removed due to the child inflicting injury to his four-year-old brother . . . causing [his brother] to have a bloody nose, kicking the foster mother; and the foster mother was overwhelmed with the care and attention the child required.'

"In a February 1, 2010 interview, B.A. (then four years old) described various physical abuse suffered by himself and J.G. at the hands of father and mother. B.A. claimed J.G. had threatened to get a knife and kill B.A. B.A. also said children at school hit J.G. and made J.G. mad.

"On February 3, 2010, J.G.'s foster parent reported that J.G. 'had been suspended from school for one day for kicking the teacher . . . .' On March 22, 2010, J.G. swung at an Orangewood staff member three times, connecting once. On another occasion at his foster home, J.G. threw a lamp at his foster parent. SSA could not find a foster home willing to accept J.G. due to his behavioral issues.

"A July 8, 2010, psychological evaluation of J.G. included the following assessment: '[J.G.]'s impulsivity with respect to outbursts of aggression and anger appear to be due to confusion about how to respond and act appropriately. At the age of 11, [J.G.] has yet to experience a consistent home where he has learned about appropriate responses to adversity.'

"The jurisdictional and dispositional hearing was continued on multiple occasions. The hearing finally proceeded on October 27, 2010. Mother and father stipulated to an amended factual basis for the dependency action, and the court found the

children to be dependents under Welfare and Institutions Code section 300, subdivision (b). [(Fn. omitted.)] The court released all of the children to mother's custody under certain 'C.R.I.S.P.-like conditions.'[1] Included among the conditions were requirements that father not live with the family and any visits by father had to be monitored.

"The children were detained at Orangewood on November 22, 2010. SSA filed an ex parte application on December 6, 2010, informing the court of an alleged violation of the condition that father not have unmonitored contact with the children. On the positive side, according to his therapist in late December 2010, J.G. was 'doing so much better since he has been returned to Orangewood . . . . The child . . . has not displayed any behavior problems.'

"Trial began on December 13, 2010 and continued through January 5, 2011, with regard to dispositional issues. The court found by clear and convincing evidence that section 361, subdivision (c)(1),[2] applied as to mother and father. The court ordered the children removed from the physical custody of parents and ordered SSA to provide reunification services to parents. The court approved the three younger children's placement, and approved of J.G.'s *temporary* placement at Orangewood (but disapproved of Orangewood as a placement beyond the time necessary to find a more appropriate placement). The court found SSA adequately explained why it could not place all four siblings together, despite the importance of maintaining sibling relationships.

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1 "C.R.I.S.P. is an acronym standing for Conditional Release with Intensive Supervision.

2 "'There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody.' (§ 361, subd. (c)(1).)

"Since we filed our last opinion the juvenile court held a combined 6-, 12-, and 18-month trial. Social worker Brenda Dominguez testified on January 23, 2012. She was assigned to the case at the end of October 2011.

"Dominguez recommended the court terminate services. She testified she did not feel it would be appropriate to return the children to the mother's care because of 'new allegations of physical abuse that were brought to the agency's attention. And the child has reported—the child [B.A.] has reported that he was physically abused by the mother. So there are concerns. And due to the trial visit being [*sic*] failed because of the alleged physical abuse.' She added there were also 'concerns that the child [J.G.] has been demonstrating behavioral issues for quite some time now, and the mother's belief is that there are no behavioral issues with the children. So that is a concern. [¶] The children do need—specifically, [J.G.] does need services to assist him with physical aggression. If [J.G.] were to return to the mother, her belief there are no behavioral issues would be a concern as to how she would handle things when the child would demonstrate these behaviors.'

"In December 2011, Dominguez provided the mother with information about where to obtain anger management services. But it was not until the day Dominguez testified that the mother informed her she had enrolled in an anger management program. Prior to that date, the mother completed parenting education, individual counseling and a personal empowerment program.

"The mother's counsel did not cross-examine Dominguez until March 5, 2012, about six weeks after her direct examination. In the interim, three of the four children had visitation with the mother in February. Afterward B.A. made allegations about the mother squeezing him during the visit. Over the course of time, Dominguez has had concerns the children are not well behaved and the mother has difficulties controlling them. On February 15, the foster mother reported J.G. disclosed he had been hit by his stepfather.

"With regard to SSA reports written by Dominguez, the mother's counsel unsuccessfully objected at every opportunity to the admission of the reports into evidence absent an opportunity to cross-examine a social worker whose notes Dominguez included in the reports. An investigator from the public defender's office testified she tried to serve the other social worker, Elizabeth Gomez, with a subpoena to appear at trial, but was told Gomez was on leave. Six SSA reports were admitted into evidence. They were dated November 28, 2011, December 13, 2011, December 19, 2011, January 23, 2012, February 6, 2012 and March 5, [and] 12. The four we find in the appellate record were all signed by Dominguez and her supervisor Michael Waterhouse.

"When the court ruled at the end of the trial, it made all its findings by clear and convincing evidence. The court found 'return of the children would create a substantial risk of detriment to the safety, protection or physical or emotional well being of the children and . . . reasonable services have been provided . . . . [¶] [T]he extent of the progress which has been made toward alleviating or mitigating the causes necessitating placement by the mother have been minimal . . . .' The court further found that placement of the four children together was not appropriate and that SSA made reasonable efforts to maintain J.G.'s relationships with others. The court ordered reunification services terminated and set a hearing under section 366.26.

"The reports contain the following notes: 'the children continue to be physically aggressive with each other and adults in the home'; B.A. 'grabbed his male peer's private area on a few occasions at school, and continued to push and fight with other students in school'; B.A. yelled to a child at school 'I'm going to kill you'; when the social worker observed two one-half inch scratches under both of C.A.'s eyes, the foster mother explained 'the children fight with one another constantly'; the foster mother reported that B.A. 'picked fights constantly with his siblings and was aggressive toward them and the adults in the home'; and that C.A. behaves 'aggressively.' Additionally, at a January 10, 2012 hearing county counsel informed the court that 'noting from some of

the past 15-day reviews that the youngest children in the past have been reported to bite each other.'"

The current appeal is from the juvenile court's termination of the mother's parental rights over now six-year-old Christian pursuant to section 366.26. The juvenile court also found by clear and convincing evidence that Christian is adoptable.

At the hearing, Dominguez testified she had been working with Christian for three years, and that she had no doubt he was adoptable. With regard to visitation by the mother, Dominquez says she was having consistent monitored visits with Christian once a week for three hours. During those visits, Christian primarily interacts with his younger siblings, but "from time to time he also interacts with his mother."

In light of Dominguez's recommendation that the juvenile court should terminate the mother's parental rights, she was asked what effect, if any, she thought that would have on Christian. She responded: "Like I said, during the visit it's a time for him to play and he also gets the same thing in his current home, so I don't see that being detrimental to him. I think that he can—I believe that he can get the same thing outside of the monitored visit with his biological family." She said the prospective adoptive family is willing to continue contact between Christian and his siblings. She explained she is not recommending the child be sent to Mexico to live with an aunt because Christian is thriving where he now lives. He is involved with sports, is now better able to express himself verbally and has fewer tantrums. She added that "in the past we've had other maternal relatives express firmly their desire to proceed with adoption, and when the time comes if things have gotten difficult . . . , they have expressed reluctance to proceed with services and have in the end said, come pick up the child, let's go ahead and have another child placed in my home."

A lengthy and detailed study performed by a government agency in Mexico was admitted into evidence. It states the purpose of the study was to present to the authorities in the United States and Mexico the social and economic situation of

Christian's aunt and uncle in Mexico. The recommendation of Mexican authorities was that Christian and his siblings should be placed with their relatives in Mexico.

With regard to the request to place Christian for adoption with an aunt in Mexico, the juvenile court stated: "A six-year-old boy needs the permanence of a home that is willing to adopt him. This court is not prepared to take a child who has gone through eight homes, eight removals, and roll the dice to gamble on yet a ninth one out of the country. That wouldn't make sense for me to do. That would not be me acting in the best interest of your child." The juvenile court continued: "The state of the evidence is that the caretakers hopefully will adopt Christian, will hopefully continue providing Christian the relationship he currently has with his siblings. But even if that relationship didn't exist, it still does not outweigh the benefit that he will derive from adoption."

## II

## DISCUSSION

The mother contends the juvenile court erred "when it failed to independently review the maternal aunt and uncle for relative placement." Pursuant to section 361.3, subdivisions (a) and (c)(1), "preferential consideration" shall be given to a request by a relative of the child for placement, which means that "a relative seeking placement shall be the first placement to be considered and investigated." Under subdivision (e), "[i]f the court does not place the child with a relative who has been considered . . . , the court shall state for the record the reasons placement with that relative was denied."

"The relative placement preference, however, is not a relative placement *guarantee*." (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.) "[T]he fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.)

The record before us contains ample evidence that the placement preference was overridden in this case. As the juvenile court explained when it declined to place the child with his aunt in Mexico, the record shows compelling reasons not to place Christian with his aunt regardless of her qualifications. The juvenile court noted that despite the family relationship, the relatives in Mexico were strangers to Christian. Also, he has adapted to family life with a family who wants to adopt him. And the juvenile court expressed hope that Christian would maintain contact with his siblings who are local.

The case before us is very similar to *In re Stephanie M., supra,* 7 Cal.4th 295. In each case the juvenile court declined to change placement from foster parents with whom a troubled, fragile child had a strong bond to relatives in Mexico with whom the child had no bond. In *Stephanie M.*, the Supreme Court stated: "[I]t was the considered judgment of the juvenile court that a change of placement was not in the child's best interest, in view of her fragile emotional state and her successful and enduring bond with the foster parents. We see no abuse of discretion . . . ." (*Id.* at p. 321.) Nor do we see an abuse of discretion here. Christian also has a strong bond with his prospective adoptive family. He has lived in eight different households. He is happy and thriving, and the juvenile court did not err in declining to place him with a relative who is a virtual stranger to him.

The mother also argues the juvenile court's judgment terminating her parental rights is not supported by substantial evidence. Specifically, mother contends she "has a continuing parent-child relationship with Christian which outweigh[s] the benefit of adoption."

"The purpose of the California dependency system is to protect children from harm and preserve families when safe for the child. [Citation.] If reunification is not possible within the statutory timeframe, the child must be provided a stable, permanent home by adoption, guardianship or placement in long-term foster care. [Citations.] Adoption is the permanent plan preferred by the Legislature. [Citation.] If

reunification efforts have failed and the child is adoptable, the court must select adoption unless it finds terminating parental rights would be detrimental to the child . . . ." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

There is an exception to that statutory preference for adoption, for which the parent bears the burden of proof, if the juvenile court finds termination would be detrimental to the child because the parent has maintained regular visitation and contact with the child, and that the child would benefit from the continuing relationship. (§ 366.26, subd. (c)(1)(B)(i).)

"If the court's ruling is supported by substantial evidence, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c)." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396.) The type of parent-child relationship sufficient to derail the statutory preference for adoption is one in which "regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The parental relationship exception also requires that the juvenile court find that the existence of the parent-child relationship constitutes a compelling reason for determining that termination would be detrimental to the child, a finding which is based on facts, but not primarily a factual issue. "It is, instead, a 'quintessentially' discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.)

In this case, the juvenile court praised the mother for the quality of her visits, commenting they were "outstanding," but cautioned her that she had "to remember

that the law requires me to view this not from how much Christian means to you or what it would mean to you to have Christian in your life or what it would mean—what it would take away from you to lose Christian. The analysis is what is best from Christian's point of view."

Christian has spent most of his life in foster care, and his primary contacts with the mother have been a few hours a week with monitors present. The record before us contains a large amount of evidence that the mother was not a benefit for Christian. For example, a monitor reported how difficult it was for him to transition to a visit "by clinging on to the foster mother, or kicking and yelling when picked up by the mother." Monitors had to intervene to assist the mother with misbehavior issues. After his visits with the mother, Christian was irritable and aggressive. The foster mother "reported the child wants nothing to do with the mother." At times, he threw tantrums during visits with the mother and kicked and bit her when she tried to calm him.

The juvenile court concluded the provisions of section 366.26 (c)(1)(B)(i) do not apply and that termination of parental rights and adoption of Christian is in his best interest.

Under the circumstances we find in this record, substantial evidence supports the judgment and orders and we cannot conclude the juvenile court abused its discretion.

## III

## DISPOSITION

The judgment and orders of the juvenile court are affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.